

United States
Circuit Court of Appeals

For the Ninth Circuit.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation, Organized
and Existing Under the Laws of the State of
Arizona,

Plaintiff in Error,

vs.

BANK OF WOODLAND, a Corporation, STE-
PHENS AGRICULTURAL AND LIVE
STOCK COMPANY, a Corporation,
JOSEPH CRAIG, P. N. ASHLEY, J. L.
STEPHENS, J. J. STEPHENS, L. D.
STEPHENS and N. A. HAWKINS,

Defendants in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Northern District of California,
Second Division.

Filed

NOV 5 - 1914

F. D. Monckton,
Clerk.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Names and Addresses of Attorneys of Record.]

CHARLES S. WHEELER and JOHN F. BOWIE,
Attorneys for Plaintiff and Plaintiff in Error,
Nevada Bank Building, San Francisco,
California.

A. E. SHAW, BERT SCHLESINGER, DENSON,
COOLEY & DENSON, THEODORE A.
BELL and MASTICK and PARTRIDGE,
Attorneys for Defendants and Defendants in
Error,
68 Post St., San Francisco, California.

*In the District Court of the United States, for the
Northern District of California.*

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation, Organized
and Existing Under the Laws of the State of
Arizona,

Plaintiff,

vs.

BANK OF WOODLAND, a Corporation, CAPAY
DITCH COMPANY, a Corporation, STE-
PHENS AGRICULTURAL AND LIVE
STOCK COMPANY, a Corporation, JO-
SEPH CRAIG, P. N. ASHLEY, J. L.
STEPHENS, J. J. STEPHENS, L. D. STE-
PHENS and N. A. HAWKINS,

Defendants.

Complaint.

The above-named plaintiff complains of the above-named defendants, and for cause of action, alleges:

I.

That the plaintiff now is and ever since the 9th day of April, 1913, has been a corporation, duly organized and existing under and by virtue of the laws of the State of Arizona.

II.

That the defendant, Bank of Woodland, now is, and at all the times hereinafter mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of California.

III.

That the defendant, Capay Ditch Company, now is, and at all the times hereinafter mentioned has been, a corporation duly [1*] organized and existing under and by virtue of the laws of the State of California.

IV.

That the defendant, Stephens Agricultural and Live Stock Company, now is, and at all the times hereinafter mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of California.

V.

That the defendants, Joseph Craig, P. N. Ashley, J. L. Stephens, J. J. Stephens, L. D. Stephens and N. A. Hawkins, are each and all residents and citizens of the State of California.

*Page-number appearing at foot of page of original certified Record.

VI.

That heretofore, to wit, on the 24th day of March, 1912, the said defendants became and were indebted to one E. P. Vandercook, in the sum of one hundred sixty-seven thousand four hundred twenty-nine and 30/100 (\$167,429.30) dollars, for money had and received by the said defendants, of and from the said Vandercook, to and for the use and benefit of the said Vandercook; that thereafter and while said defendants were so indebted to said Vandercook, the said Vandercook, for a valuable consideration, sold, assigned, transferred and set over the said indebtedness, claim and demand, to this plaintiff, and plaintiff is now the lawful owner and holder thereof. That defendants have not paid the said sum of money, nor any part or portion thereof, or any interest due thereon, and the whole amount thereof, together with legal interest from said 24th day of March, 1912, is now due and owing from defendants to this plaintiff.

SECOND COUNT.

For another, further and separate cause of action,
[2] plaintiff avers:

I.

That the plaintiff now is and ever since the 9th day of April, 1913, has been a corporation, duly organized and existing under and by virtue of the laws of the State of Arizona.

II.

That the defendant, Bank of Woodland, now is, and at all the times hereinafter mentioned has been, a corporation duly organized and existing under and

by virtue of the laws of the State of California.

III.

That the defendant, Capay Ditch Company, now is, and at all the times hereinafter mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of California.

IV.

That the defendant, Stephens Agricultural and Live Stock Company, now is, and at all the times hereinafter mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of California.

V.

That the defendants, Joseph Craig, P. N. Ashley, J. L. Stephens, J. J. Stephens, L. D. Stephens and N. A. Hawkins, are each and all residents and citizens of the State of California.

VI.

That heretofore, to wit, on or about the 24th day of March, 1912, the said defendants became and were indebted to one E. P. Vandercook, in the sum of one hundred and seventeen thousand one hundred twenty-seven and 79/100 (\$117,127.79) dollars, for money paid out and expended by the said Vandercook, at the [3] special instance and request of defendants, to and for the use and benefit of said defendants. That thereafter, and while said defendants were so indebted to said Vandercook, said Vandercook for a valuable consideration, sold, assigned, transferred and set over the said indebtedness, claim and demand to this plaintiff, and plaintiff is now the

lawful owner and holder thereof.

VII.

That defendants have not paid the said sum of money, nor any part or portion thereof, or any interest thereon, and that the whole of said amount, together with interest is now due and owing from defendants to plaintiff.

THIRD COUNT.

And for another, further and separate cause of action, plaintiff avers:

I.

That the plaintiff now is and ever since the 9th day of April, 1913, has been a corporation, duly organized and existing under and by virtue of the laws of the State of Arizona.

II.

That the defendant, Bank of Woodland, now is, and at all the times hereinafter mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of California.

III.

That the defendant, Capay Ditch Company, now is, and at all the times hereinafter mentioned has been, a corporation duly organized and existing under and by virtue of the laws of the State of California.

IV.

That the defendant, Stephens Agricultural and Live Stock Company, now is, and at all the times hereinafter mentioned [4] has been, a corporation duly organized and existing under and by virtue

of the laws of the State of California.

V.

That the defendants, Joseph Craig, P. N. Ashley, J. L. Stephens, J. J. Stephens, L. D. Stephens and N. A. Hawkins, are each and all residents and citizens of the State of California.

VI.

That heretofore, to wit, on the 19th day of January, 1907, one E. P. Vandercook made and entered into an agreement in writing with the defendants, and each of them, wherein and whereby the said Vandercook agreed to buy, and the said defendants agreed to sell to the said Vandercook, nine thousand eight hundred and sixty (9,860) shares of the capital stock of the Yolo County Consolidated Water Company, a corporation, which said stock was then owned by the said defendants.

VII.

That the price which the said Vandercook agreed to pay, and which the said defendants agreed to receive, therefor, was and is the sum of forty-five (\$45.00) per share, payable in money, stocks and bonds, as follows:

The sum of ninety-one thousand two hundred fifty dollars (\$91,250.00) on said 9th day of January, 1907, and the balance in cash and bonds as follows: The sum of three and $33/100$ (\$3.33) dollars per share, in gold coin, on the 15th day of January, 1908, the sum of three and $33/100$ (\$3.33) dollars per share, in gold coin, on the 15th day of July, 1908, and the sum of three and $33/100$ (\$3.33) dollars per share in gold coin, on the 15th day of January, 1909; and

the balance, amounting to two hundred and fifty-eight thousand seven hundred and fifty and no/100 (\$258,750.00) dollars, in the bonds of a certain corporation known as the Central California Power Company, a [5] California corporation.

That it was further agreed that all of the said nine thousand eight hundred and sixty (9,860) shares of the capital stock of the said Yolo County Consolidated Water Company should be properly endorsed and placed in escrow with the California Safe Deposit and Trust Company, a California Corporation, as escrow-holder, and that the same should remain with the said corporation and should be delivered to the said Vandercook according to the terms of the said agreement between the said Vandercook and the said defendants.

That it was further agreed between all of the said parties that the aforesaid bonds of the said Central California Power Company, in the aforesaid amount of two hundred fifty-eight thousand seven hundred and fifty (\$258,750.00) dollars should also be placed in escrow with the said California Safe Deposit and Trust Company as soon as the same should be issued, and that the same should remain with said company until all cash payments provided for in the said agreement between said Vandercook and said defendants should be fully made, and until the said bonds should have a market value of ninety per cent (90%) of their par value, and that thereupon the said California Safe Deposit and Trust Company should deliver the stock of the said Yolo County Consolidated Water Company to the said Vandercook

and the said bonds to the said defendants.

That it was further understood and agreed that any and all moneys which might be expended by the said Yolo County Consolidated Water Company prior to the delivery, by said escrow-holder, to the said Vandercook of the said stock so held in escrow, for permanent betterments or improvements, or for the acquisition of any additional property required for a water system and for the storage of water, should be repaid to said Yolo County Consolidated Water Company by the said Vandercook. [6]

That it was further agreed that the said Vandercook might pay out to persons from whom contracts or options were held by said Yolo County Consolidated Water Company the moneys due or which should become due upon said contracts or options, and that the said Vandercook would further have the right to procure extensions of the said options, or any of them, to such time as would fully protect, in every particular, the then existing rights of the said corporation.

That it was further agreed that all payments for extensions made by the said Vandercook should be made in the name of or for the use of the said Yolo County Consolidated Water Company.

It was further agreed by the said defendants with the said Vandercook that the shares of the capital stock of the said Yolo County Consolidated Water Company so placed in escrow and sold to the said Vandercook, should not be subject to any indebtedness of the said corporation, or to any lien or liability, and that the said Yolo County Consolidated

Water Company should not be indebted in any sum whatever when said stock should be finally delivered as therein provided for, save and except that a certain bonded indebtedness of the said corporation in the sum of two hundred twenty-five thousand dollars (\$225,000.00) then outstanding, together with interest thereon thereafter to become due, should remain a liability of said Yolo County Consolidated Water Company.

That it was further understood and agreed that should the said Vandercook fail to make any of the additional payments of principal or interest therein provided, at the time the same became due, or should he fail to perform his part of the agreement, that then said Vandercook should lose all rights to purchase said property, and all moneys paid thereon should be retained as a consideration for the execution of said agreement, [7] and that said Vandercook should have no right to recover any portion of said payments.

That it was further understood and agreed that the said Vandercook would pay interest on all of the outstanding bonds of the Yolo County Consolidated Water Company, as the same should thereafter become due, and that all deferred payments on the purchase price of said stock of the Yolo County Consolidated Water Company, so purchased by said Vandercook should bear interest at the rate of five per cent per annum, payable semi-annually, from the date of said agreement until paid.

That it was further provided in said agreement that all net income of the Yolo County Consolidated

Water Company, arising from irrigation or otherwise, should be applied on said interest.

VIII.

That the said Vandercook, pursuant to said agreement of the 19th day of January, 1907, paid to the said defendants, the aforesaid sum of ninety-one thousand two hundred and fifty (\$91,250.00) dollars, fifty-one thousand two hundred and fifty (\$51,250.00) of which said sum was paid in cash, and forty thousand (\$40,000.00) dollars of which said sum was paid and discharged by delivering to the said defendants five hundred and thirty-three (533) shares of the capital stock of the Central Counties Land Company, a corporation, and the sum of twenty-five (\$25.00) dollars in cash, which said stock and cash said defendants agreed to and did then and there take, purchase and receive from said Vandercook in lieu of, and as a substitute for cash, and the said Vandercook duly delivered to the said California Safe Deposit and Trust Company, as provided for in said agreement, the said bonds of the said Central California Power Company in the amount of two hundred fifty-eight thousand seven hundred and fifty (\$258,750.00) dollars, and the said [8] defendants duly deposited with said California Safe Deposit and Trust Company, pursuant to said agreement, the aforesaid nine thousand eight hundred and sixty (9,860) shares of the capital stock of the Yolo County Consolidated Water Company.

IX.

That thereafter, and pursuant to said agreement, the said Vandercook, on the 29th day of March, 1907,

paid to the said defendants, on account of the interest due on bonds of the said Yolo County Consolidated Water Company, the sum of two thousand one hundred ninety-four and $37/100$ (\$2,194.37) dollars.

X.

That thereafter, and pursuant to the said agreement, the said Vandercook, on the 22d day of July, 1907, paid to the said defendants the sum of eight thousand three hundred twenty and $75/100$ (\$8,320.75) dollars, said amount being the amount of interest then due on purchase price of said stock, at the rate of five per cent per annum, pursuant to the said agreement between said Vandercook and the said defendants.

XI.

That thereafter, and on the 18th day of November, 1907, said Vandercook paid to the defendants the sum of nineteen thousand five hundred seventy and $75/100$ (\$19,570.75) dollars, being all interest then due on bonds and on the purchase price of said stock and all interest to become due under said contract to and including April 1st, 1908.

XII.

That as was contemplated by said agreement, the said Yolo County Consolidated Water Company paid out and expended for the acquisition of additional property for a water system and for the storage of water the sum of eighty-six thousand sixty and $50/100$ (\$86,060.50) dollars, such payments being made [9] at divers times, as follows:

On or about the 19th day of January, 1907, the sum of forty-eight thousand nine hundred fifty-five

and 25/100 dollars (\$48,955.25).

On or about the 31st day of January, 1907, the sum of three hundred twenty-five (\$325.00) dollars.

On or about the 31st day of January, 1907, the sum of three thousand one hundred thirty-two and 50/100 (\$3,132.50) dollars.

On or about the 31st day of January, 1907, the sum of thirty-three thousand three hundred and thirty (\$33,330.00) dollars.

On or about the 26th day of February, 1907, the sum of two hundred ninety-two and 75/100 (\$292.75) dollars.

On or about the 26th day of October, 1907, the sum of twenty-five (\$25.00) dollars.

That all of the said sums, together with interest due thereon, were, pursuant to the terms of the said agreement and at the special instance and request of the defendants, repaid to the said Yolo County Consolidated Water Company, by the said Vandercook, on the days and dates, and in the amounts hereinabove set forth.

XIII.

That while said contract was in full force and effect, the said defendants, by an instrument in writing made, executed and delivered by them to the said Vandercook, extended the time of the said Vandercook, within which to make payment of all sums of principal and interest provided for in the said contract, and then remaining due and unpaid, together with interest due or to become due thereon, until and including the 24th day of March, 1912. [10]

XIV.

That thereafter while the said agreement of January 19th, 1907, with the said Vandercook, was in full force and effect, the said defendants rescinded the said agreement and notified the said Vandercook, in writing, that they, the said defendants, did cancel, rescind and annul the same, and then and there declared the said agreement to be rescinded, and null and void, and of no force and effect, either at law or in equity, and said defendants then and there notified the said Vandercook that his rights and privileges under the said agreement had terminated and ended, and that they would not longer be bound by the said agreement, would not perform the obligations upon their part to be kept and performed, that they would not perform the acts, or any of the acts, to be performed by them thereunder, and the said defendants thereupon received from the said escrow-holder the possession of the aforesaid nine thousand eight hundred and sixty (9,860) shares of the capital stock of the Yolo County Consolidated Water Company, which had been deposited in escrow as aforesaid, and sold and transferred the same to persons other than said Vandercook and this plaintiff.

XV.

That notwithstanding the aforesaid rescission of the said contract by the said defendants, said defendants have not restored, returned or repaid to the said Vandercook, or to this plaintiff, the aforesaid moneys, or any part or portion thereof, so paid to them pursuant to the said agreement, or so paid to the said Yolo County Consolidated Water Company,

at the special instance and request of defendants, as provided for in said agreement. Nor have they repaid to the said Vandercook, or to this plaintiff, the interest or any part or portion thereof, due to the said Vandercook upon any of the aforesaid moneys, at the time of, and in consequence of the said rescission of the [11] said contract.

XVI.

That after the rescission, cancellation and annulment of the said contract as aforesaid, the said Vandercook, on the 21st day of April, 1913, sold, transferred, assigned and set over unto this plaintiff, all of his rights, claims and interests of every kind whatsoever, to recover of and from the said defendants, all of the aforesaid sums so paid by him as aforesaid to defendants, on account of said purchase price and interest, and all of the aforesaid sums of money so paid out, to and for their use and benefit, as aforesaid, under the aforesaid contract, and plaintiff has ever since been and now is the lawful owner and holder of the said claims.

XVII.

That interest figured at the legal rate of seven per cent per annum upon the aforesaid several sums of money so paid by said Vandercook to the said defendants, for and on account of the purchase price, and interest on the purchase price of said stock, and interest on bonds, pursuant to the said contract, computed to the date of the said rescission, amounts to the sum of forty-six thousand ninety-three and 43/100 (\$46,093.43) dollars.

XVIII.

That interest figured at the legal rate of seven per

cent per annum upon the aforesaid several sums of money so repaid by the said Vandercook to the said Yolo County Consolidated Water Company, at the special instance and request of defendants, pursuant to the terms of the said contract, computed to the date of the said rescission, amounts to the sum of thirty-one thousand sixty-seven and $29/100$ (\$31,067.29) dollars. [12]

XIX.

That the defendants have not repaid or returned to the said Vandercook, or to this plaintiff, either the whole or any part or portion of the moneys so paid to and received by defendants, as aforesaid, or so paid out, as aforesaid at their special instance and request, and that the aggregate amount of the said payments, to wit: Two hundred eighty-four thousand five hundred fifty-seven and $09/100$ (\$284,557.09) dollars, together with interest on said amount from the 24th day of March, 1912, are now due and owing from the said defendants to this plaintiff.

WHEREFORE, plaintiff prays judgment against the said defendants for the sum of two hundred eighty-four thousand five hundred fifty-seven and $09/100$ (\$284,557.09) dollars, together with interest thereon from the 24th day of March, 1912, at the legal rate of seven per cent (7%) per annum, and for costs of suit.

CHARLES S. WHEELER and
JOHN F. BOWIE,

Attorneys for Plaintiff.

HARDING & MONROE,
Of Counsel. [13]

State of California,

City and County of San Francisco,—ss.

H. S. Elliot, being first duly sworn, deposes and says:

That he is the President of Power and Irrigation Company of Clear Lake, plaintiff in the above-entitled action, and that he makes this affidavit in its behalf; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information and belief, and as to those matters, that he believes it to be true.

H. S. ELLIOT.

Subscribed and sworn to before me this 24th day of April, 1913.

[Seal]

ALICE SPENCER,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Apr. 24, 1913. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [14]

UNITED STATES OF AMERICA.

District Court of the United States, Northern District of California, Second Division.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation, Organized
and Existing Under the Laws of the State of
Arizona,

Plaintiff,

vs.

BANK OF WOODLAND, a Corporation, CAPAY
DITCH COMPANY, a Corporation, STE-
PHENS AGRICULTURAL AND LIVE
STOCK COMPANY, a Corporation, JO-
SEPH CRAIG, P. N. ASHLEY, J. L.
STEPHENS, J. J. STEPHENS, L. D.
STEPHENS and N. A. HAWKINS,
Defendants.

Summons.

Action brought in said District Court, and the Com-
plaint filed in the office of the Clerk of said
District Court, in the City and County of San
Francisco.

The President of the United States of America,
Greeting: To Bank of Woodland, a Corporation,
Capay Ditch Company, a Corporation, Stephens
Agricultural and Live Stock Company, a Cor-
poration, Joseph Craig, P. N. Ashley, J. L.
Stephens, J. J. Stephens, L. D. Stephens, and
N. A. Hawkins, Defendants.

YOU ARE HEREBY DIRECTED TO AP-
PEAR, and answer the Complaint in an action en-
titled as above, brought against you in the District
Court of the United States, in and for the Northern
District of California, Second Division, within ten
days after the service on you of this Summons—if
served within this county; or within thirty days if
served elsewhere.

And you are hereby notified that unless you appear
and answer as above required, the said plaintiff will
take judgment for any money or damages demanded

in the Complaint, as arising upon contract, or it will apply to the Court for any other relief demanded in the Complaint.

WITNESS the Honorable WILLIAM C. VAN FLEET, Judge of said District Court, this 24th day of April, in the year of our Lord, one thousand nine hundred and thirteen and of our [15] independence the one hundred and thirty-seventh.

[Seal]

W. B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk.

RETURN ON SERVICE OF WRIT.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed summons on the therein named N. A. Hawkins, by handing to and leaving a true and attested copy thereof together with copy of complaint attached thereto, with N. A. Hawkins, personally, at Woodland, Cal., in said District, on the 29th day of April, A. D. 1913.

C. T. ELLIOTT,
U. S. Marshal.
By I. W. Grover,
Office Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed summons on the therein named L. D. Stephens,

by handing to and leaving a true and attested copy thereof, together with copy of complaint attached thereto, with L. D. Stephens, personally, at Woodland, Cal., in said District, on the 29th day of April, A. D. 1913.

C. T. ELLIOTT,

U. S. Marshal.

By I. W. Grover,

Office Deputy. [16]

RETURN ON SERVICE OF WRIT.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Summons on the therein named J. L. Stephens, by handing to and leaving a true and attested copy thereof, together with copy of Complaint attached thereto, with J. L. Stephens, personally, at Woodland, Cal., in said District, on the 29th day of April, A. D. 1913.

C. T. ELLIOTT,

U. S. Marshal.

By I. W. Grover,

Office Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Summons on the therein named Bank of Woodland (a corporation), by handing to and leaving a true and attested copy thereof, together with copy of Complaint attached thereto, with J. S. Craig,

Cashier of the Bank of Woodland (a corporation),
at Woodland, Cal., in said District, on the 29th day
of April, A. D. 1913.

C. T. ELLIOTT,
U. S. Marshal.
By I. W. Grover,
Office Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Summons on the therein named Capay Ditch Company (a corporation), by handing to and leaving a true and attested copy thereof, together with copy of Complaint attached thereto, with Roy M. Pike, President of the Capay Ditch Company (a corporation), personally, at San Francisco, Cal., in said District, on the 1st day of May, A. D. 1913.

C. T. ELLIOTT,
U. S. Marshal.
By I. W. Grover,
Office Deputy. [17]

RETURN ON SERVICE OF WRIT.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Summons on the therein named Stephens Agricultural and Live Stock Company (a corporation), by handing to and leaving a true and attested copy thereof, together with a copy of complaint attached thereto, with F. W. Stephens, Secretary of

the Stephens Agricultural and Live Stock Company (a corporation), personally, at Woodland, Cal., in said District, on the 29th day of April, A. D. 1913.

C. T. ELLIOTT,

U. S. Marshal.

By I. W. Grover,

Office Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,

Northern District of California,—ss.

I hereby certify and return that I served the annexed Summons on the therein named Joseph Craig, by handing to and leaving a true and attested copy thereof, together with copy of Complaint attached thereto, with Joseph Craig, personally, at Woodland, Cal., in said District, on the 29th day of April, A. D. 1913.

C. T. ELLIOTT,

U. S. Marshal.

By I. W. Grover,

Office Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,

Northern District of California,—ss.

I hereby certify and return that I served the annexed Summons on the therein named P. N. Ashley, by handing to and leaving a true and attested copy thereof, together with copy of Complaint attached thereto, with P. N. Ashley, personally, at Woodland,

Cal., in said District, on the 29th day of April, [18]
A. D. 1913.

C. T. ELLIOTT,
U. S. Marshal.
By I. W. Grover,
Office Deputy.

RETURN ON SERVICE OF WRIT.

United States of America,
Northern District of California,—ss.

I hereby certify and return that I served the annexed Summons on the therein named J. J. Stephens, by handing to and leaving a true and attested copy thereof, together with copy of complaint attached thereto, with J. J. Stephens, personally, at Woodland, Cal., in said District, on the 29th day of April, A. D. 1913.

C. T. ELLIOTT,
U. S. Marshal.
By I. W. Grover,
Office Deputy.

[Endorsed]: Filed May 7th, 1913. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [19]

*In the District Court of the United States, for the
Northern District of California.*

No. 15,656.

POWER & IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation, Organized
and Existing Under the Laws of the State of
Arizona,

Plaintiff,

vs.

BANK OF WOODLAND, a Corporation, CAPAY,
DITCH COMPANY, a Corporation, STE-
PHENS AGRICULTURAL & LIVE
STOCK COMPANY, a Corporation, JO-
SEPH CRAIG, P. N. ASHLEY, J. L. STE-
PHENS, J. J. STEPHENS, L. D. STE-
PHENS and N. A. HAWKINS,

Defendants.

Joint and Several Demurrer of All Defendants.

Now come the defendants in the above-entitled
cause and file this, their joint and several demurrer
to the complaint of plaintiff on file herein, and for
grounds of demurrer allege:

I.

That the first count of said complaint does not
state facts sufficient to constitute a cause of action
against these defendants, or either or any of them.

II.

That this Honorable Court has no jurisdiction of
the subject matter of the first count of said com-
plaint, or of the persons of these defendants, or

either or any of them, in this:

That it appears from said first count of said complaint that the said plaintiff was organized as a corporation under the laws of a foreign State in order to confer jurisdiction upon this Honorable Court and to deprive the courts of the State of California of jurisdiction hereof.

III.

That the first count of said complaint is ambiguous, in [20] this: That it cannot be ascertained therefrom at what time the assignment therein alleged was made.

IV.

That the said first count of said complaint is unintelligible, for the reason that it is hereinabove alleged to be ambiguous.

V.

That the said first count of said complaint is uncertain, for the reason that it is hereinabove alleged to be ambiguous.

VI.

That the second count of said complaint does not state facts sufficient to constitute a cause of action against these defendants, or either or any of them.

VII.

That this Honorable Court has no jurisdiction of the subject matter of the second count of said complaint, or of the persons of these defendants, or either or any of them, in this:

That it appears from the said second count of said complaint that the said plaintiff was organized as a corporation under the laws of a foreign State in

order to confer jurisdiction upon this Honorable Court and to deprive the courts of the State of California of jurisdiction hereof.

VIII.

That the second count of said complaint is ambiguous, in this: That it cannot be ascertained therefrom at what time the assignment therein alleged was made.

IX.

That the said second count of said complaint is unintelligible, for the reason that it is hereinabove alleged to be ambiguous.

X.

That the said second count of said complaint is uncertain, [21] for the reason that it is hereinabove alleged to be ambiguous.

XI.

That the third count of said complaint does not state facts sufficient to constitute a cause of action against these defendants, or either or any of them.

XII.

That this Honorable Court has no jurisdiction of the subject matter of the third count of said complaint or of the persons of said defendants, or either or any of them, in this:

That it appears from said third count of said complaint that the said plaintiff was organized as a corporation under the laws of a foreign State in order to confer jurisdiction upon this Honorable Court and to deprive the courts of the State of California of jurisdiction hereof.

XIII.

That the third count of said complaint is ambiguous, in this: That it cannot be ascertained therefrom at what time the assignment therein alleged was made.

XIV.

That said third count of said complaint is unintelligible for the reason that it is hereinabove alleged to be ambiguous.

XV.

That the said third count of said complaint is uncertain for the reason that it is hereinabove alleged to be ambiguous.

WHEREFORE, these defendants pray to be hence dismissed with their costs.

A. E. SHAW,
BERT SCHLESINGER,
DENSON, COOLEY & DENSON,
THEODORE A. BELL,
MASTICK & PARTRIDGE,

Attorneys for Defendants.

I hereby certify that I am one of the attorneys [22] for the defendants herein, and in my opinion the foregoing demurrer is well taken in point of law and is not interposed for delay.

JOHN S. PARTRIDGE.

Receipt of a copy of the within joint and several

demurrer of all defendants, this 9th day of June, 1913, is hereby admitted.

CHARLES S. WHEELER and
JOHN F. BOWIE,

Solicitors for Plaintiff.

HARDING & MONROE,
Of Counsel.

[Endorsed]: Filed Jun. 9, 1913. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [23]

At a stated term, to wit, the March term, A. D. 1914,
of the District Court of the United States of
America, in and for the Northern District of
California, Second Division, held at the court-
room in the City and County of San Francisco,
on Tuesday, the 10th day of March, in the year
of our Lord one thousand nine hundred and
fourteen. Present: The Honorable MAU-
RICE T. DOOLING, District Judge.

No. 15,656.

POWER & IRRIGATION CO. OF CLEAR LAKE

vs.

BANK OF WOODLAND et al.

Order Sustaining Demurrer.

Defendants' demurrer, heretofore heard and sub-
mitted, being now fully considered and the Court
having filed its opinion thereon, it was ordered that
said demurrer be and the same is hereby sustained.

[24]

*In the District Court of the United States, for the
Northern District of California, Second Division.*

No. 15,656.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation,
Plaintiff,

vs.

BANK OF WOODLAND, a Corporation, et al.,
Defendants.

Order for Judgment.

This matter came on to be heard on the 24th day of January, 1914, upon the demurrer of the defendants to plaintiff's complaint upon the ground that the above-entitled court is without jurisdiction to hear and determine the said action; and thereupon the said demurrer was argued by counsel for the respective parties and submitted to the Court for its decision, and all and singular, the premises having been duly considered by the Court, and it appearing that the said Court is without jurisdiction to hear and determine the said action,—

IT IS HEREBY ORDERED AND ADJUDGED that the said action be and the same is hereby dismissed, and that said defendants recover their costs herein, taxed at the sum of \$6.40, and that judgment be entered herein accordingly.

M. T. DOOLING,
Judge of Said Court.

[Endorsed]: Filed Mar. 24, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [25]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,656.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation, Organized
and Existing Under the Laws of the State of
Arizona,

Plaintiff,

vs.

BANK OF WOODLAND, a Corporation, CAPAY
DITCH COMPANY, a Corporation, STE-
PHENS AGRICULTURAL AND LIVE
STOCK COMPANY, a Corporation, JO-
SEPH CRAIG, P. N. ASHLEY, J. L. STE-
PHENS, J. J. STEPHENS, L. D. STE-
PHENS, and N. A. HAWKINS,

Defendants.

Judgment.

In this cause the Court having ordered that a judg-
ment of dismissal, for want of jurisdiction, be entered
herein with costs to the defendants:

Now, therefore, by virtue of the law and by reason
of the premises, it is ordered that plaintiff take noth-
ing by this action and that defendants go hereof with-
out day; and that said defendants do have and re-
cover of and from said plaintiff their costs herein

expended taxed at \$6.40.

Judgment entered March 24, 1914.

WALTER B. MALING,
Clerk. [26]

*In the District Court of the United States for the
Northern District of California.*

No. 15,656.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation, Organized
and Existing Under the Laws of the State of
Arizona,

vs.

BANK OF WOODLAND, a Corporation, CAPAY
DITCH COMPANY, a Corporation, STE-
PHENS AGRICULTURAL AND LIVE
STOCK COMPANY, a Corporation, JO-
SEPH CRAIG, P. N. ASHLEY, J. L. STE-
PHENS, J. J. STEPHENS, L. D. STE-
PHENS and N. A. HAWKINS.

Clerk's Certificate to Judgment-roll.

I, W. B. Maling, Clerk of the District Court of the
United States for the Northern District of Cali-
fornia, do hereby certify that the foregoing papers
hereto annexed constitute the Judgment-roll in the
above-entitled action.

ATTEST my hand and the seal of said District
Court, this 24th day of March, 1914.

[Seal]

WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk.

[Endorsed]: Filed March 24th, 1914. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.
[27]

*In the District Court of the United States, in and
for the Northern District of California,*

No. 15,656.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation, Organized
and Existing Under the Laws of the State of
Arizona,

Plaintiff,

vs.

BANK OF WOODLAND, a Corporation, CAPAY
DITCH COMPANY, a Corporation, STE-
PHENS AGRICULTURAL AND LIVE
STOCK COMPANY, a Corporation, JO-
SEPH CRAIG, P. N. ASHLEY, J. L. STE-
PHENS, J. J. STEPHENS, L. D. STE-
PHENS, and N. A. HAWKINS,

Defendants.

Opinion Sustaining Demurrer.

CHARLES S. WHEELER and JOHN F.
BOWIE, Attorneys for Plaintiff.

A. E. SHAW, BERT SCHLESINGER, DEN-
SON, COOLEY & DENSON, THEO-
DORE A. BELL and MASTICK &
PARTRIDGE, Attorneys for Defendants.

Plaintiff is a corporation organized and existing
under the laws of Arizona. The complaint contains

three counts. The first count avers that on March 24th, 1912, the defendants were indebted to one E. P. Vandercook in the sum of \$167,429.30 for money had and received by them of and from said Vandercook to and for his use and benefit, and that said Vandercook had assigned to plaintiff his said claim and demand against defendants, and that plaintiff is now the lawful owner and holder thereof.

The second count alleges that on March 24, 1912, the defendants became indebted to said Vandercook, at the special instance and request of defendants, and for their use and benefit, and that Vandercook had assigned his claim and demand against defendants to plaintiff who is now the lawful owner and holder thereof.

The third count recites that in January, 1907, the defendants entered into an agreement, in writing, with said Vandercook, whereby he agreed to buy and they agreed to sell 9,860 shares of the capital stock of the Yolo County [28] Consolidated Water Company at the agreed price of \$45.00 per share, payable as follows:

\$91,250.00 down, and \$3.33 a share to be paid on each of the following dates: January 15, 1908, July 15th, 1908, January 15th, 1909, and the remainder, amounting to \$258,750.00 in the bonds of a corporation known as the Central California Power Company.

That the said capital stock of the Yolo County Consolidated Water Company should be properly endorsed and placed in escrow, and there remain to be delivered to said Vandercook, in accordance with

said agreement; that the said bonds of said Central California Power Company should also be placed in escrow, there to remain until all the cash payments had been made and until such bonds should have a market value of ninety (90%) per cent of their par value, when said bonds were to be delivered to defendants, and the stock of the Yolo County Consolidated Water Company was to be delivered to said Vandercook.

Said agreement also provided that said Vandercook might pay out certain moneys for contracts or options held by said Yolo County Consolidated Water Company and for extensions thereof, and that such payments made by him should be in the name and for the use of said company. It was also agreed that if said Vandercook failed to make any of the payments at the time the same became due, or should fail to perform his part of the agreement, he should lose all rights to purchase said stock, and all moneys paid thereon should be retained as a consideration for the execution of said agreement.

That said Vandercook should have no right to recover any portion of said payments.

The complaint further avers that pursuant to said agreement, said Vandercook deposited in escrow the bonds of the [29] said Central California Power Company, and during the life of the agreement, paid to defendants or for them, in accordance therewith, various amounts, aggregating \$207,396.37; that after said payments had so been made and while said agreement was in full force and effect, the defendants rescinded the same, and notified Vandercook

thereof, in writing, declaring the same to be rescinded and null and void; and further notified Vandercook that they would no longer be bound by said agreement nor perform any of the acts to be performed by them thereunder.

That thereupon the defendants received from the escrow-holder the said 9,860 shares of the stock of the Yolo County Consolidated Water Company and sold and transferred them to some person other than Vandercook or the plaintiff; that notwithstanding these facts, no part of the moneys paid to or for defendants by said Vandercook has been repaid.

That after the rescission, cancellation, and annulment of the contract as aforesaid, the said Vandercook sold, transferred, assigned and set over to plaintiff all of his rights, claims, and interest of every kind whatever to recover of and from the said defendants all of the aforesaid sums; and that plaintiff is now the lawful owner and holder of said claims, the total amount sued for here, including interest, being \$284,557.09.

The substance of the complaint is thus fully set out, because the jurisdiction of the Court is challenged by demurrer, on the ground that recovery is sought upon a chose in action, and that as plaintiff's assignor, being a citizen of this State, could not have maintained an action in this court, his assignee, the plaintiff, cannot do so, although a citizen of another State.

The question thus presented is, whether the facts alleged in the complaint bring the case within the following provisions of Section 24 of the Judicial

Code: "No District Court shall have cognizance of any suit * * * to recover upon any [30] promissory note or other chose in action in favor of any assignee * * * unless such suit might have been prosecuted in such court to recover upon said note or other chose in action if no assignment had been made."

This section is of comparatively recent enactment. The provisions of former sections being that no assignee could recover "the contents of a chose in action" where his assignor could not do so. The phrase "contents of a chose in action" has been before the courts many times for interpretation as applied to particular facts. Nowhere, however, in the adjudicated cases have I been able to find such definition "of a chose in action" as could be relied upon for application in the present case, unless it be in the following language of the Supreme Court in *Bushnell vs. Kennedy*, 76 U. S. 390: "That the indebtedness here was a chose in action, cannot be doubted, for under that comprehensive description are included all debts, and all claims for damages for breach of contract, or for torts connected with contracts." Much confusion arose in the earlier cases because of the use of the words "to recover the *contents* of a chose in action." These words have been omitted from the section of the Judiciary Act above quoted, and in their place we have the words "to recover upon a chose in action." That the claim here assigned is a chose in action, I have not the slightest doubt. It must be remembered that we are not dealing with the words "contents of a chose in action,"

which would imply a subsisting contract having the contents capable of recovery ; but even if we were, the facts set out show that plaintiff, is relying upon a contract pleaded by it and defendants' failure to carry it out. Defendants' defense, if they have any, must also be based upon the contract and upon the failure of plaintiff's assignor to carry it out. The averment that defendants rescinded the contract serves only to confuse the [31] present question ; for if we take the averments of the complaint together, we will see that all that is really pleaded is that defendants have attempted to rescind the contract, as no rescission can be accomplished under the circumstances shown here until the party rescinding "has restored to the other party everything of value received from him under the contract" (Civil Code of Cal., Section 1691), I am satisfied that plaintiff is suing upon a chose in action, and that as it's assignor could not maintain the action in this court, plaintiff cannot do so.

The demurrer will therefore be sustained.

March 10th, 1914.

M. T. DOOLING,
Judge.

[Endorsed] : Filed Mar. 10, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [32]

*In the United States District Court, for the Northern
District of California, Second Division.*

No. 15,656.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation, 'Organized
and Existing Under the Laws of the State of
Arizona,

Plaintiff,

vs.

BANK OF WOODLAND, a Corporation, STE-
PHENS AGRICULTURAL AND LIVE
STOCK COMPANY, a Corporation, JO-
SEPH CRAIG, P. N. ASHLEY, J. L. STE-
PHENS, J. J. STEPHENS, L. D. STE-
PHENS and N. A. HAWKINS,

Defendants.

**Petition for Writ of Error and Order Allowing Writ
of Error.**

To the Honorable Court Above Named:

Now, comes Power and Irrigation Company of
Clear Lake, a corporation, plaintiff in the above-
entitled action, by Charles S. Wheeler and John F.
Bowie its attorneys, and respectfully shows, that on
the 24th day of March, 1914, the Court made and
filed herein its order wherein and whereby the said
Court found that it was without jurisdiction to hear
and determine the above-entitled action, and wherein
and whereby it was ordered and adjudged that the
said action be dismissed, that said defendants recover
their costs, and that judgment be entered herein ac-

cordingly; and upon said order so made and filed as aforesaid, a final judgment was entered on the said 24th day of March, 1914, against your petitioner, Power and Irrigation Company of Clear Lake, a corporation, the plaintiff above named. Your petitioner feels itself aggrieved by the said order and judgment entered thereon as aforesaid and herewith petitions the Court for an order allowing it to procure [33] a Writ of Error to the Circuit Court of Appeals of the United States for the Ninth Circuit, sitting at San Francisco, under the laws of the United States in such cases made and provided.

WHEREFORE, the premises considered, your petitioner prays that a Writ of Error do issue, that an appeal in its behalf to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, in said Circuit, for the correction of errors complained of and herewith assigned, be allowed and that an order be made fixing the amount of security to be given by the plaintiff in error, conditioned as the law directs.

CHARLES S. WHEELER and
JOHN F. BOWIE,
Attorneys for Petitioner in Error.

Order Granting Writ of Error [and Fixing Amount of Bond].

Writ of Error granted upon the foregoing petition upon the Petitioner filing a bond in the sum of Three Hundred (\$300.00) Dollars, to be conditioned as required by law.

Dated September 23, A. D. 1914.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Sept. 23d, 1914. Walter B. Maling, Clerk. [34]

In the United States District Court, for the Northern District of California, Second Division.

No. 15,656.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation, Organized and
Existing Under the Laws of the State of
Arizona,

Plaintiff,

vs.

BANK OF WOODLAND, a Corporation,
STEPHENS AGRICULTURAL AND LIVE
STOCK COMPANY, a Corporation, JOSEPH CRAIG, P. N. ASHLEY, J. L. STEPHENS, L. D. STEPHENS and N. A. HAWKINS,

Defendants.

Assignment of Errors on Writ of Error.

Now, comes the plaintiff in the above-entitled action by its attorneys, Charles S. Wheeler and John F. Bowie, and avers that the judgment entered in the above-entitled cause on the 24th day of March, 1914, is erroneous and unjust to the plaintiff, and files with its petition for a writ of error the following Assignment of Errors, and specifies that the

judgment is erroneous in each and every of the following particulars, viz.:

1. The said Court had jurisdiction of this action and erred in sustaining the defendants' demurrer to plaintiff's complaint for want of jurisdiction.

2. The judgment is erroneous in this: That it appears that the same was ordered and given upon the ground that the said Court was without jurisdiction of the action; whereas, the said Court had jurisdiction of the action.

3. The said Court erred in its opinion and conclusion [35] that the plaintiff is suing upon a chose in action within the meaning of Section 24 of the Judicial Code; whereas, the plaintiff is in fact suing upon an obligation created by law.

4. The said Court erred in holding "that no rescission can be accomplished under the circumstances shown here," etc., forasmuch as the complaint shows that the said rescission was accomplished by consent of all the parties, and it was not, in this case, necessary in order to accomplish such rescission to restore everything of value received under the contract.

WHEREFORE, the plaintiff prays that the said judgment be reversed, and the District Court directed to overrule said demurrer, or that such other relief be awarded as the nature of the case demands.

CHARLES S. WHEELER and
JOHN F. BOWIE,

Attorneys for Plaintiff.

[Endorsed]: Filed Sept. 23d, 1914. Walter B. Maling, Clerk. [36]

In the United States District Court, for the Northern District of California, Second Division.

No. 15,656.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation, Organized and
Existing Under the Laws of the State of
Arizona,

Plaintiff,

vs.

BANK OF WOODLAND, a Corporation, STE-
PHENS AGRICULTURAL AND LIVE
STOCK COMPANY, a Corporation, JO-
SEPH CRAIG, P. N. ASHLEY, J. L. STE-
PHENS, J. J. STEPHENS, L. D. STE-
PHENS, and N. A. HAWKINS,

Defendants.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS,
that we, Power & Irrigation Company of Clear Lake,
a corporation, as principal, and Pacific Coast
Casualty Co., as surety, of the City and County of
San Francisco, State of California, are held firmly
bound unto Bank of Woodland, a corporation;
Stephens Agricultural and Live Stock Company, a
corporation, Joseph Craig, P. N. Ashley, J. L.
Stephens, L. D. Stephens and N. A. Hawkins in the
sum of \$300.00, lawful money of the United States,
to be paid to them and their respective executors,
administrators, and successors; to which payment,
well and truly to be made, we bind ourselves and

each of us, jointly and severally, and each of our successors and assigns, by these presents.

Sealed with our seals and dated this 23d day of September, 1914.

WHEREAS, the above-named Power and Irrigation Company of Clear Lake has prosecuted a writ of error to the Circuit Court of Appeals of the United States to reverse the judgment of [37] the District Court for the Ninth District of California, in the above-entitled cause.

NOW, THEREFORE, the condition of this obligation is such that if the above-named Power and Irrigation Company of Clear Lake shall prosecute its said writ of error to effect and answer all costs if it fails to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE.

By H. S. ELLIOT,
President.

By R. H. BORLAND,
Secretary.

[Seal Power and Irrigation Company.]

PACIFIC COAST CASUALTY COMPANY,

By R. W. STEWART,
Attorney in Fact.

[Seal Pacific Coast Casualty Company.]

Approved September 23d, 1914.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Sept. 23d, 1914. Walter B. Maling, Clerk. [38]

In the United States District Court, for the Northern District of California, Second Division.

No. 15,656.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation, Organized and
Existing Under the Laws of the State of
Arizona,

Plaintiff,

vs.

BANK OF WOODLAND, a Corporation;
STEPHENS AGRICULTURAL AND LIVE
STOCK COMPANY, a Corporation, JOSEPH CRAIG, P. N. ASHLEY, J. L. STEPHENS, J. J. STEPHENS, L. D. STEPHENS and N. A. HAWKINS,

Defendants.

Praecipe for Transcript on Writ of Error.

To the Clerk of the Above-entitled Court:

Sir: Please make up, print, and issue in the above-entitled cause a certified transcript of the record, upon a writ of error allowed in this cause, to the Circuit Court of Appeals of the United States for the Ninth Circuit, sitting at San Francisco, California, the said transcript to include the following: Judgment-roll, consisting of,—

Complaint;

Summons, with return of service thereon;

Joint and Several Demurrers of All Defendants;

Minute Order Sustaining Demurrers;

Order for Judgment;

Judgment;

Clerk's Certificate to Judgment-roll.

Opinion of the Court (Dooling, J.).

Petition for Writ of Error, and Order endorsed thereon, Assignment of Errors.

Writ of Error.

Citation on Writ of Error. [39]

Bond on Appeal.

Praecipe for Transcript on Writ of Error.

You will please transmit to the Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, the said record when prepared, together with the Original Citation on Appeal.

CHARLES S. WHEELER and

JOHN F. BOWIE,

Attorneys for Plaintiff and Appellant.

Service and receipt of a copy of the within Praecipe this 23d day of September, 1914, is hereby admitted.

MASTICK & PARTRIDGE,

A. E. SHAW,

BERT SCHLESINGER,

DENSON, COOLEY & DENSON,

Attorneys for Defendants.

[Endorsed]: Filed Sep. 23, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [40]

*In the District Court of the United States, in and for
the Northern District of California.*

No. 15,656.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation, etc.,
Plaintiff,

vs.

BANK OF WOODLAND, a Corporation, et al.,
Defendants.

Clerk's Certificate to Record on Writ of Error.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing forty (40) pages, numbered from 1 to 40, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for transcript of record, as the same remain on file and of record in the above-entitled cause, and that the same constitute the return to the writ of error hereto annexed.

I further certify that the cost of the foregoing return to writ of error is \$24.00; that said amount was paid by the attorneys for the plaintiff, and that the original writ of error and citation issued in said cause are hereby annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District

Court this 21st day of October, A. D. 1914.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk. [41]

*In the District Court of the United States for the
Northern District of California, Second Division.*

No. 15,656.

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation, Organized and
Existing Under the Laws of the State of
Arizona,

Plaintiff,

vs.

BANK OF WOODLAND, a Corporation,
STEPHENS AGRICULTURAL AND LIVE
STOCK COMPANY, a Corporation, JO-
SEPH CRAIG, P. N. ASHLEY, J. L.
STEPHENS, J. J. STEPHENS, L. D.
STEPHENS, and N. A. HAWKINS,

Defendants.

Writ of Error [Original].

United States of America,—ss.

The President of the United States, to the Honorable
Judge of the District Court of the United States,
for the Northern District of California, Division
Two, Greeting:

Because in the record and proceedings, as also in
the rendition of the judgment of a plea which is in

the said District Court, before you, between Power and Irrigation Company of Clear Lake, a corporation, organized and existing under the laws of the State of Arizona, plaintiff in error, and Bank of Woodland, a corporation, Stephens Agricultural and Live Stock Company, a corporation, Joseph Craig, P. N. Ashley, J. L. Stephens, J. J. Stephens, L. D. Stephens, and N. A. Hawkins, defendants in error, a manifest error has happened to the damage of said Power and Irrigation Company of Clear Lake, a corporation, etc., plaintiff in error, as by said complaint appears, and we being willing that error, if any hath been, should be corrected, and full and speedy justice be done to the party aforesaid, in this behalf do command you if judgment be therein given, that under [42] your seal you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, together with this writ, so that you have the same, at the City and County of San Francisco, State of California, where said Court is sitting, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, and the record and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct the error what of right, and according to the law and customs of the United States, should be done.

WITNESS, the Honorable EDWARD D. WHITE,

Chief Justice of the United States, this 23d day of September, A. D. 1914.

[Seal] WALTER B. MALING,
Clerk of the District Court of the United States, for
the Northern District of California.

By _____,
Deputy Clerk.

Allowed this 23 day of September, A. D. 1914.

M. T. DOOLING,
Judge. [43]

Service and receipt of a copy of the within Writ
this 23d day of September, 1914, is hereby admitted.

MASTICK & PARTRIDGE,
A. E. SHAW,
BERT SCHLESINGER,
DENSON, COOLEY & DENSON,
Attorneys for Defendants.

[Endorsed]: No. 15,656. In the United States
District Court for the Northern District of California. Power and Irrigation Company of Clear Lake, a
Corporation, Plaintiff, vs. Bank of Woodland, a Cor-
poration, et al., Defendants. Writ of Error. Filed
Sept. 23, 1914. W. B. Maling, Clerk. By J. A.
Schaertzer, Deputy Clerk.

[Return to Writ of Error.]

The answer of the Judges of the District Court of
the United States, in and for the Northern District
of California.

The record and all proceedings of the plaint
whereof mention is within made, with all things

touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

_____,
Clerk. [44]

*In the United States Circuit Court of Appeals for
the Ninth Judicial Circuit.*

POWER AND IRRIGATION COMPANY OF
CLEAR LAKE, a Corporation, Organized and
Existing Under the Laws of the State of
Arizona,

Plaintiff and Appellant,

vs.

BANK OF WOODLAND, a Corporation, STE-
PHENS AGRICULTURAL AND LIVE
STOCK COMPANY, a Corporation, JO-
SEPH CRAIG, P. N. ASHLEY, J. L. STE-
PHENS, J. J. STEPHENS, L. D. STE-
PHENS and N. A. HAWKINS,

Defendants and Appellees.

Citation on Writ of Error [Original].

United States of America,—ss.

The President of the United States, to Bank of
Woodland, a Corporation, Stephens Agricul-
tural and Live Stock Company, a Corporation,
Joseph Craig, P. N. Ashley, J. L. Stephens, J.

J. Stephens, L. D. Stephens, and N. A. Hawkins,
Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Ninth *District*, to be holden at the City and County of San Francisco, in the State of California, on the 22 day of October, 1914, being within thirty days from the date hereof, pursuant to a Writ of Error filed in the clerk's office of the District Court of the United States, for the Northern District of California, wherein Power and Irrigation Company of Clear Lake, a corporation, organized and existing under the laws of the State of Arizona, is the plaintiff in error, and you and each of you are the defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the party in that behalf. [45]

WITNESS the Honorable M. T. DOOLING,
United States District Judge for the Northern District of California, this 23 day of September, A. D. 1914.

M. T. DOOLING,
United States District Judge. [46]

Service and receipt of a copy of the within Citation this 23d day of September, 1914, is hereby admitted.

MASTICK & PARTRIDGE,
A. E. SHAW,
BERT SCHLESINGER,
DENSON, COOLEY, & DENSON,
Attorneys for Defendants.

[Endorsed]: No. 15,656. In the United States Circuit Court of Appeals for the Ninth Circuit. Power and Irrigation Company of Clear Lake, a Corporation, Plaintiff, vs. Bank of Woodland, a Corporation et al., Defendants. Filed Sep. 23, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 2499. United States Circuit Court of Appeals for the Ninth Circuit. Power and Irrigation Company of Clear Lake, a Corporation, Organized and Existing Under the Laws of the State of Arizona, Plaintiff in Error, vs. Bank of Woodland, a Corporation, Stephens Agricultural and Live Stock Company, a Corporation, Joseph Craig, P. N. Ashley, J. L. Stephens, J. J. Stephens, L. D. Stephens and N. A. Hawkins, Defendants in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Northern District of California, Second Division.

Filed October 21, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

